IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 10266 of 2006(V)

AGAINST THE ORDER DATED / / IN EP.79/2003 IN OS.137/2000 of SUB COURT, OTTAPPALAM

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PETITIONER:PETITION : JUDGMENT DEBTOR

P.FATHIMA @ FATHIMABI, W/O. LATE PALLATH HAMZA, CHANDAPPADI, ARAKURSSI AMSOM AND DESOM, MANNARKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.K.MUHAMMED SALAHUDHEEN

RESPONDENTS: DECREE HOLDER

A.GOPALA KRISHNAN, S/O. LATE KADAMTHODI KUTTYKRISHNAN NAIR, AMBAZHAKKOTT HOUSE, VIYYAKURSSI AMSOM AND DESOM, MANNARKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.K.P.DANDAPANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.10266/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE DRAFT SALE PROCLAMATION FILED BY THE RESPONDENT.

EXT.P2:- COPY OF THE VALUATION DT. 11.3.98.

EXT.P3:- COPY OF THE OBJECTION FILED BY THE PETITIONER DT. 30.11.04 IN EP.NO 79/03 BEFORE THE COURT OTTAPPALAM.

EXT.P4:- COPY OF THE ORDER OF THE COURT BELOW IN EP. NO.79/03 DT. 17.2.06 OF THE SUBORDINATE JUDGE OTTAPPALAM .

/TRUE COPY/

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PIUS C. KURIAKOSE, J.

W.P.(C) No. 10266 OF 2006

Dated this the 6th day of July, 2007

JUDGMENT

This writ petition is filed under Article 227 by the judgment debtor urging the ground that the execution court is not justified in proclaiming and selling the entire extent of the property belonging to him. While admitting this Writ Petition, this Court imposed a condition that the petitioner shall deposit a sum of Rs.50,000/- towards the decree debt. I am informed by both sides that the above deposit was made. As indicated, the ground which is seriously raised by the petitioner is that the present market value of the property is much more than the value shown in the proclamation. The essential contention of the petitioner is that sale of a portion of the property will suffice to realise the decree debt and it is not necessary to proclaim and sell the entire property. The learned counsel for the respondent fairly conceded that a regular First Appeal has been preferred by the petitioner against the decree which is being executed. He also submitted that this court in the appellate jurisdiction initially granted stay, but the same has not been extended so far.

Under the above circumstance, I am inclined to dispose of the Writ Petition itself issuing the following directions:

1. It is open to the petitioner to seek revival of the stay which was initially granted to him by this Court in the appellate jurisdiction and if the copy of the stay order is produced before the execution court, the execution court will not continue with the execution proceeding. Subject to the above, the stay presently ordered will at any rate continue for six more months.

2. It is open to the petitioner to the petitioner to identify a purchaser who will be prepared to purchase any portion of the property belonging to him for a price sufficient for liquidating the entire decree debt. Once such a purchaser is identified, she shall file a copy of the agreement entered into with the prospective purchaser and file an application for permission of the court below to have a private sale of the property. The court will consider that application hear both sides and pass appropriate orders thereby ensuring that the entire decree debt is wiped off. If the issue is not settled within six months as directed above, the execution court will continue with the execution from the stage at which they were stayed by this court.

PIUS C. KURIAKOSE, JUDGE

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